Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications by Qwest Communications, International Inc. for Authorization to Provide In-Region, InterLATA Services in Montana, Utah, Washington and Wyoming	)	CC Docket No. 02-189

COMMENTS OF COVAD COMMUNICATIONS COMPANY

K. Megan Doberneck
Senior Counsel
mdoberne@covad.com

Praveen Goyal
Senior Counsel for Government
and Regulatory Affairs
pgoyal@covad.com

Jason D. Oxman
Assistant General Counsel
joxman@covad.com

Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0400 (voice)
202-220-0401 (fax)

Introduction

Covad Communications Company (Covad), by its attorneys, hereby respectfully submits its comments in opposition to the long distance applications submitted by Qwest in the above-referenced docket. Qwest prematurely seeks authorization from the FCC to offer in-region, interLATA services while substantial, competitively significant defects persist in several aspects of its application, including loop pricing, OSS, performance in providing competitors with nondiscriminatory access to UNEs, and performance reporting.

Covad is the leading nationwide provider of broadband connectivity using digital subscriber line (DSL) technology. Covad's nationwide facilities-based broadband network reaches nearly 45% of the nation's homes and businesses. Covad offers residential and business users a wide variety of innovative and competitively priced broadband services, and currently provides broadband connectivity to over a third of a million customers. Covad competes directly with the retail broadband offerings of Qwest and other Bell Operating Companies, providing vital innovation and price pressure on the Bells that has sparked widespread DSL deployment in the five years since Covad launched the first commercial DSL offering in the nation.

As a facilities-based provider, Covad relies on Qwest to provide unbundled transmission facilities (loops and interoffice transport) and the operations support systems (OSS) necessary to facilitate ordering and provisioning of such facilities. Covad is collocated in hundreds of central offices throughout the Qwest territory, and from those central offices, Covad offers consumers and small and medium-sized businesses a competitively priced alternative to Qwest's high-priced T-1 services. Covad also

provides residential consumers the nation's lowest price DSL offering, Telesurfer Link, which provides broadband connectivity at or below the price of dial-up services. In the face of these intense competitive pressures, Qwest has both the incentive and the ability to handicap Covad's pro-competitive offerings by denying, delaying, and degrading the UNEs that Qwest is required to provide. Given the current crisis in the telecommunications sector, consumers and competitive carriers need the Commission's honest and diligent evaluation of Qwest's compliance with its market-opening obligations now more than ever.

Covad's objections to Qwest's long distance applications[1] center primarily on checklist items two and four. Qwest's pricing for line shared loops in Washington bears no relation to the Commission's TELRIC pricing principles, clearly violating the Commission's rules and prior orders governing the pricing of UNEs, including pricing of the high frequency portion of the loop (HFPL). Further, Qwest's application fails to make the requisite *prima facie* case that Qwest provides competitors with non-discriminatory access to its OSS for loop make-up information. KPMG's testing and Qwest's performance reporting fail to demonstrate that Qwest provides competitors with access to all loop qualification information available to Qwest personnel in a non-discriminatory manner. Moreover, as Covad's comments demonstrate, Qwest's OSS for providing loop makeup information to competitors is highly unreliable, and may not even contain all the loop makeup information Qwest has made available to outside plant personnel and, through them, potentially to retail sales personnel as well. Qwest's

[1] Covad submits these comments in opposition to all five of Qwest's applications, but focuses on the factual record developed before the Washington Commission. The issues raised in these comments have applicability throughout the Qwest region.

ordering and provisioning OSS fares no better. Qwest acknowledges that it essentially "fakes" its service order completion (SOC) notifications to competitors. Also, Qwest repeatedly sends out unreliable and erroneous firm order confirmation (FOC) notices to Covad. Moreover, KPMG's testing itself shows that Qwest's OSS is replete with human errors, *even for orders that should be treated as flow-through*. Qwest's actual performance in providing competitors with access to UNEs also falls short of its obligations. Specifically, Qwest repeatedly fails several of the performance metrics measuring its maintenance and repair of line shared loop UNEs. Furthermore, Qwest's stated "new build" policy has the perverse effect of masking in Qwest's performance reports its delays in filling competitors' orders, because competitors' rejected and "held" orders are excluded from several provisioning metrics. Furthermore, Qwest's performance reporting in general is unreliable and inaccurate, as evidenced by the numerous (and, as far as Covad knows, unremedied) inaccuracies found by Liberty in its data reconciliation efforts, and by Qwest's failure even to produce any underlying data for a key provisioning metric.

The Commission must not allow Qwest to ignore the requirements of the competitive checklist in Section 271. The standards to which Qwest's current applications are held bear serious repercussions for a substantial portion of the Qwest service region, including Washington, the Qwest state in which Covad provides the highest volume of service. If the Commission does not hold Qwest's current applications to the high standards the Act requires, these applications hold the potential to close local markets to competition throughout Qwest's service territories. Thus, the Commission must not take these applications, and their concomitant dangers, lightly. The

Commission must take every pain to ensure that these applications meet the strict requirements of section 271. Unless and until Qwest remedies the specific defects in its application discussed herein, the Commission must not grant Qwest's bid for Section 271 authorization.[2]

1. Qwest's Recurring Rate for the High Frequency Portion of the Loop Is a Clear Violation of TELRIC.

Qwest must be required to set the price for the high frequency portion of the loop ("HFPL") at the same price Qwest continues to charge itself: $0. This non-discriminatory price is the only method by which to remedy the *clear* violation of TELRIC perpetuated by Qwest and the Washington Commission in, respectively, seeking and approving, a permanent, positive rate of $4.00 for the HFPL. Setting aside the discrimination issue, there are three additional reasons for setting the HFPL rate at $0: (1) Qwest has not applied the pricing proscription mandated by the FCC in the *Line Sharing Order* for the pricing of the HFPL; (2) Qwest failed to prove that it sustains any costs, much less TELRIC-compliant costs, through production of a TELRIC-compliant cost study, even though such a study is required by the FCC's pricing rules; and (3) Qwest seeks the imposition of a market-based and –driven rate rather than cost-based rate.

[2] On May 24, 2002, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *USTA v. FCC*, 290 F.3d 415. In *USTA*, the court remanded to the Commission its *UNE Remand* and *Line Sharing* decisions, concluding that the Commission had not adequately explored certain factors in its implementation of section 251(c)(3) of the Act. The court's mandate must issue prior to the decision in *USTA* taking effect. As of the date of this filing (July 2, 2002), that mandate has not yet issued. Indeed, it is substantially likely that parties to the *USTA* case, including the Commission itself, may seek further judicial review of the *USTA* decision, which would further delay the issuance of the court's mandate. In short, although the Commission will continue its review of its current UNE rules in the Triennial Review proceeding, those UNE rules (including loops, linesharing, and OSS) remain in full legal force at this time, and were in force at the time the instant application was filed. As such, notwithstanding the *USTA* decision, Qwest must prove to the Commission that it is in full compliance with all of the Commission's UNE rules in order to satisfy its burden of proof pursuant to the competitive checklist of section 271 of the Act.

Qwest's pricing for the HFPL in Washington State fails to satisfy the requirements of TELRIC, and therefore section 271.

When the FCC issued its *Line Sharing Order* requiring ILECs to provide line sharing,[3] it specifically directed that the price of line shared loop UNEs "should be set by states in the same manner as they set the price for other unbundled network elements,"[4] and noted that virtually all states had already adopted and implemented a TELRIC methodology.[5] The FCC then provided a simple prescription for establishing a price for the line shared loop UNE utilizing TELRIC principles:

> In arbitrations and in setting interim prices, states may require that *incumbent LECs charge no more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services.* This is a straightforward and practical approach for establishing rates consistent with the general pro-competitive purpose underlying the TELRIC principles. We find that establishing the TELRIC of the shared line in this manner does not violate the prohibition in section 51.505(d)(1) of our rules against considering embedded cost in the calculation of the forward looking economic cost of an unbundled network element.[6]

The FCC went on to explain the reasons for its determination:

> We find it reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing xDSL on a loop already in use for voice services. Under the price cap rules for new access services, the recurring charges for such services may not be set below the direct costs of providing the service, which are comparable to incremental costs. The rates the incumbent LECs set for their special access xDSL services should cover those costs. *The*

[3] *Line Sharing Order*, ¶ 4.

[4] *Line Sharing Order*, ¶ 135.

[5] *Line Sharing Order*, ¶ 132.

[6] *Line Sharing Order*, ¶ 139 (emphasis added).

> *incumbent LECs filed their cost support for their own special access DSL services before we issued the notice giving rise to this Order compelling line sharing, and they have defended their cost support when challenged in petitions to reject or suspend their tariff filings. Since the incremental loop cost of the high-frequency portion of the loop should be similar to the incremental loop cost of the incumbent LEC's xDSL special access service, this approach should result in the recovery of the incremental loop cost of the high-frequency portion of the loop*.[7]

The FCC took pains to make clear that its HFPL pricing guidelines were fully consistent with TELRIC:

> These guidelines either follow directly from the … TELRIC … methodology that the Commission set forth in the *Local Competition First Report and Order* to govern interconnection and unbundled network element pricing, or, if not a direct outgrowth of those principles, are consistent with them in the context of this particular unbundled network element.[8]

In a later Order regarding access reform issues, the FCC clarified that this pricing principle for the HFPL is mandatory, not suggestive. The FCC stated:

> The Line Sharing Order concluded that states should not permit incumbent LECs to charge more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services. [9]

It is now equally clear that TELRIC is the law of the land. The Supreme Court has stated, in no uncertain terms, that TELRIC is the only legally permissible methodology by which UNEs may be priced:

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[7] *Line Sharing Order*, ¶ 140 (emphasis added).

[8] *Line Sharing Order*, ¶ 132.

[9] FCC 00-193, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 (May 31, 2000), at ¶ 98.

> The incumbents have failed to show that TELRIC is unreasonable on its own terms, largely because they fall into the trap of mis-characterizing the FCC's departures from the assumption of a perfectly competitive market (the wire-center limitation, regulatory and development lags, or the refusal to prescribe high depreciation and capital costs) as inconsistencies rather than pragmatic features of the TELRIC plan. Nor have they shown it was unreasonable for the FCC to pick TELRIC over alternative methods, or presented evidence to rebut the entrants' figures as to the level of competitive investment in local-exchange markets. *In short, the incumbents have failed to carry their burden of showing unreasonableness to defeat the deference due the Commission. We therefore reverse the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act.*[10]

Qwest's FCC filings in support of its DSL tariffs show it has no loop cost, and no HFPL cost, in providing that service. During the Washington cost proceedings, Qwest reaffirmed that it incurs no direct or incremental loop costs when providing the HFPL:

> Q: Now, focusing again on what we have described as the loop, the piece of copper between the network interface device and the central office, isn't it correct that there are no additional costs to the loop itself when a CLEC provides DSL service using the HUNE?
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> A: That's correct … [T]here are not any additional costs.[11]

Because there is no loop cost associated with the HFPL or the provision of DSL service, Qwest does not include any loop cost in its filed cost studies supporting its FCC tariffs for Qwest DSL (formerly, MegaBit) services. Qwest even went so far as to explain that: "In the retail service environment for [Qwest DSL] service, the cost of the loop is

[10] *Verizon, Inc., v. FCC*, 535 U.S. ___, Slip Op., p. 52 (May 2002).

[11] WA Cost Hearing Trans., (Fitzsimmons), pp. 181:3-11; *see also* WA Cost Hearing Ex. 11 (Thompson Supp. Direct), pp. 5-6; WA Cost Hearing Ex. 194 (Cabe Response), p. 3; WA Cost Hearing Ex. 350 (Spinks Direct), p. 12.

attributed to basic service, and therefore there is no incremental cost of the loop attributed to [Qwest DSL]."[12]

It comes as no surprise that Qwest incurs no incremental cost in providing the HFPL. Almost three years ago, the FCC reached precisely this same conclusion in the *Line Sharing Order*, finding that ILECs recover their embedded loop costs prior to leasing out the HFPL:

> The record indicates that incumbent LECs generally allocate virtually all loop costs to their voice services, then deploy a voice-compatible xDSL service such as ADSL on the same loop, allocating little or no incremental loop costs to the new resulting service.
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> The incumbent's price, however, is significantly lower because the incumbent deploys its voice-compatible DSL service at little or no incremental cost by utilizing the same loop that it uses for local exchange service.[13]

Qwest insinuated in an *ex parte* filed with the Commission in connection with the "ROC I" applications[14] that the Commission should disregard the positive rate for the HFPL on the basis that the *Line Sharing Order* does not require a zero rate. This argument is an extraordinary red herring. The Commission, Qwest and Covad all know that the HFPL rate is not TELRIC-compliant, as fully evidenced by the WUTC's 13th Supplemental Order in Docket No. UT-003013 (Part A), no matter what Qwest argues about the *Line Sharing Order*.[15] Further, setting aside whatever the *Line Sharing Order*

[12] WA Cost Hearing Ex. 34 (Qwest response to Covad Data Request 01-021); *Line Sharing Order*, ¶¶ 41 and 55.

[13] *Line Sharing Order*, ¶¶ 41 and 55.

[14] All *ex partes* referenced herein were filed in connection with the "ROC I" applications in Docket No. 02-148.

[15] The rationale underlying the WUTC's decision to set a positive rate was driven by the notion that all cost-causers should contribute to the cost of the loop. *See* Thirteenth Supplemental Order, ¶¶ 56-57.

states regarding the pricing of the HFPL[16], Qwest simply cannot get around the fact that the HFPL rate it charges CLECs in Washington results in clear discrimination against its only competitor in the ADSL space (which is the only type of DSL service Qwest currently provides).

The touchstone of the Act is non-discrimination.[17] That is, the Act requires, at a minimum, that Qwest extend the same rates, terms and conditions for UNEs to its wholesale competitors as it does for itself. Because Qwest disclosed that it attributes *no* costs to the HFPL in its own federal retail DSL tariff filings and that it recovers *all* of its loop costs through rates for other services, which facts it also admitted during the hearing in the Washington cost case,[18] it cannot charge CLECs anything for the HFPL. Thus, to permit Qwest to charge anything, when it attributes no costs to itself, will result definitively in discrimination by Qwest against CLECs.

Equally important and equally supportive of a finding that the $4.00 HFPL rate constitutes a clear violation of TELRIC is the fact that Qwest never even attempted to show that it incurs costs in providing the HFPL. That is, Qwest never provided a cost

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While, as a theoretical matter, that rationale can result in a TELRIC-compliant rate, the WUTC's reasoning suffers from several flaws, as discussed more fully in the body of these Comments. Stated in summary, however, first, a positive rate permits discrimination as between the ILEC and the CLEC. Second, it results in over-recovery of loop costs in violation of TELRIC and therefore Section 271, a fact that the WUTC acknowledged but did not resolve. *Id.*, ¶ 85. Third, the cost causation the WUTC did focus on (i.e., loop conditioning) is already being recovered by Qwest through its recurring loop rates as well as the conditioning charges the WUTC approved. *See id.*, ¶¶58-59.

[16] Covad fundamentally disagrees with Qwest's interpretation of the *Line Sharing Order*. As the Commission made clear in Docket No. 00-193 (May 31, 2000), the requirement that ILECs charge CLECs no more for the HFPL than the ILECs attribute to the HFPL in their federal retail DSL tariffs is mandatory, not suggestive. *See* ¶ 98.

[17] 47 U.S.C. 251(c)(2) and 271 (B).

[18] WA Cost Hearing Trans. (Fitzsimmons), 181: 3-11., *see also* WA Cost Hearing Ex. 11 (Thompson Supp. Direct), pp. 5-6; WA Cost Hearing Ex. 194 (Cabe Response), p. 3; WA Cost Hearing Ex. 350 (Spinks Direct), p. 12.

study supporting its claimed costs. Standing alone, this failure too demonstrates a clear violation of TELRIC.

The FCC has made clear that the *only* method by which an incumbent LEC may prove that its rates are *cost-based* and compliant with FCC pricing rules is through a *cost study*:

> (e) Cost study requirements. An incumbent LEC *must prove* to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, *using a cost study that complies with the methodology set forth in this section and § 51.511*. 47 C.F.R. § 51.505(e) (emphasis added).

As the FCC further specified in the body of its pricing rules, a cost study sufficient to support a claim of cost-based pricing must include support for the joint or common costs associated with the UNE at issue:

> Cost studies must include the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such elements . . . measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration *[plus a] reasonable allocation of forward-looking common costs*. . . . 47 C.F.R. § 51.505.

The FCC's requirement of a cost study for both incremental and common costs is not mere recital. To the contrary, the FCC was emphatic that cost studies be the basis of any state commission pricing ruling by requiring the state commission to include such studies in the record relied upon to establish UNE rates. 47 C.F.R. § 51.505(e)(2).

While, as a theoretical matter, it is possible for Qwest permissibly to charge a positive rate for the HFPL, that rate nonetheless must be cost-based. As an evidentiary matter, however, an ILEC can only prove that its rates are cost-based if they are

supported by a cost study.[19] Here, Qwest did not even make a pretense at providing, nor did the WUTC ever require, cost support for the HFPL rate of $4.00. To the contrary, Qwest relied solely on the testimony of its witnesses that a positive HFPL rate must be set. That testimony does not constitute a cost study, nor may it be deemed a substitute for a cost study since it does not comply with the requirements enumerated by the FCC at 47 C.F.R. § 51.505. Accordingly, because Qwest has failed to provide a cost study supporting *any* recurring rate for the HFPL, it has failed to sustain its burden of proof as to that rate. 47 C.F.R. § 51.505(e).

The absence of a cost study speaks volumes. If Qwest actually incurred costs, it certainly would have been able to develop and provide a cost study. That Qwest did not only reinforces the fact that Qwest incurs no costs in provisioning the HFPL to CLECs. More damning, Qwest admitted in another proceeding that, in fact, the loop should not be viewed as a shared cost to be distributed among anything other than the loop:

> Economists generally disagree with the view that the local loop is shared facility because it conflicts with the fundamental principle of cost causation, which, in economics, attributes a cost to the source (an economic decision or activity) that gave rise to it. According to this principle, the costs associated with the loop are caused by a customer gaining access to the network.
>
> ***
>
> The contrary position that the loop's cost should depend on how it is used is based on a fallacy that confuses the cost causer (namely, the consumer or purchaser of the loop) with the entity that incurs and feeds to recover the cost (namely, the supplier of the loop).
>
> ***
>
> ***Question: Do you accept the premise that the local loop is a shared facility whose costs should be allocated to different***

[19] 47 C.F.R. 51.505.

> ***services? Answer: No. This premise is contrary to sound economic principles and based on an incorrect approach to cost recovery processes***.[20]

Thus, even setting aside the *Line Sharing Order*, Qwest has failed to meet the evidentiary burden established by the Commission for ILECs wishing to prove that their rates are TELRIC-compliant, as evidenced by its own testimony.

Equally fatal to Qwest's desire to charge a positive HFPL are the problems associated with double recovery. While Qwest has indicated in a July 24, 2002 *ex parte* that it will deaverage the HFPL rates (at least for the ROC I states), the continued desire to charge a positive rate for the HFPL is not accompanied by any commitment to rebalance loop rates. In the absence of rebalancing, as the Department of Justice acknowledged in its Comments on the ROC I applications, Qwest will over-recover the cost it incurs in provisioning stand alone and line shared loops since it already recovers all of its loop costs through rates for other services.[21] That is, Qwest will recover more than its costs, in violation of TELRIC, since it already recovers all of its loop costs from stand alone loops and then will receive additional income from the HFPL rates. The Commission should not permit Qwest to double recover, at the expense of CLECs and, more importantly, consumers.

Qwest also apparently has suggested that the Commission should ignore its failure to produce a cost study because its HFPL study would look just like a loop cost study.

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[20] WA Cost Hearing Trans. (Fitzsimmons), pp. 241-43.

[21] WA Cost Hearing Ex. 350 (Spinks Direct), p. 12. More importantly, in Washington, Qwest is subject to rate of return regulation pursuant to which Qwest is guaranteed to recover 100% of the cost of the entire loop – which includes the HFPL – from basic voice services. *See* WA Cost Hearing Trans. (Thompson), p. 536:1-537:21. Further, Qwest publicly pledged in May 2000 that it would not increase its tariffed voice rates, despite the probability of a zero HFPL.

While, again as a theoretical matter, that may be the case[22], each of Qwest's UNE rates must demonstrably comply with TELRIC, which is not the case here. More importantly, this argument smacks of a belated attempt to justify a litigation strategy that now is causing Qwest a problem. Part of the problem with Qwest's assertion that it incurs any costs in provisioning the HFPL is the fact that its proposed rate for the HFPL constantly changes, depending on what appears to be politically palatable. For instance, in Minnesota, Qwest advocated a HFPL rate of 50% of the unbundled loop rate. When that ploy proved unsuccessful, Qwest adopted a new tactic, advocating in Washington that the HFPL rate should be up to 50% of the unbundled loop rate, capped at $10.[23] Then, in Washington, Qwest proposed a $5.00 rate, but happily accepted the $4.00 rate.

That there is no cost basis for its HFPL rate was readily admitted by Qwest in the Washington cost hearing. In fact, Qwest witness Fitzsimmons testified that there is no meaningful evidence supporting its HFPL pricing.[24] Instead, Qwest manufactured right before the hearings[25] and the WUTC approved a purportedly "reasonable" price, but its economist agreed that there is no meaningful evidence that a price of 1% of the loop cost is any less reasonable than a price of 50% of the loop cost.[26] Under Qwest's approach,

[22] Covad doubts the sincerity of this statement. If the cost study underlying the HFPL looked just like Qwest's submitted cost study for loops, then there is no doubt that a positive HFPL would result in over-recovery by Qwest. Simply put, a loop cost study that includes the HFPL would make adjustments for rate rebalancing. Moreover, Qwest's Loop Mod (which is its loop cost study) makes no adjustment for cost recovery contribution by the HFPL, because the Loop Mod cost study already fully recovers the cost of Qwest's loops.

[23] Thirteenth Supplemental Order, ¶26.

[24] WA Cost Hearing Ex. 2 (Fitzsimmons Response), p. 11.

[25] WA Cost Hearing Trans. (Thompson), p. 409:8-12.

[26] WA Cost Hearing Trans., (Fitzsimmons), pp. 208:11-20 and 238:5-15 (witness did not know whether 0% or 50% is closer to a competitive outcome).

therefore, there is no empirical or even anecdotal data upon which the Commission may rely in establishing the HFPL rate; rather, Qwest picked a "market-based" number that it likes, but cannot support. Had Qwest actually believed that it incurred, and then actually did incur, any incremental costs in providing the HFPL, such costs would be reflected in an appropriately prepared cost study. The absence of any such study is nothing more than a reflection of a lack of any actual costs.

Importantly, the FCC has already rejected what is, in essence, a value-based rate that Qwest espoused. During the pendancy of the FCC's line sharing proceeding, Qwest – then US WEST—argued that the price of the HFPL should be set at a level that reflected the "tremendous value that a [competitive LEC] would obtain by acquiring the loop's data transmission potential." The FCC expressly rejected this pricing position, on the basis that it did not comport with the requirement that UNE rates be cost-based:

> We reject US WEST's value-based pricing methodology. As we stated in the *Local Competition First Report and Order*, the price for unbundled network elements should be based on forward-looking costs. Setting the price for an unbundled network element based upon the competitive value that the facility confers upon another party does not conform with the TELRIC principles set forth both in this Order and in the Local Competition First Report and Order.[27]

At this juncture, it is important for the Commission to place this particular rate issue in context. For example, Verizon, which likewise discloses no costs in provisioning the HFPL, has voluntarily proposed a $0 rate for the HFPL. Similarly, SBC, which also discloses no costs for its retail DSL product, has a $0 HFPL rate in Illinois, Kansas, Michigan and Texas. BellSouth, region-wide, has an HFPL MRC of just over $0.50.

[27] *Line Sharing Order*, ¶ 157.

Qwest's pricing of the HFPL in Washington State represents a clear violation of TELRIC and Section 271(c)(2)(B)(i). Qwest's application for Section 271 relief in Washington must be rejected until it sets the HFPL at $0, because that is the only TELRIC-compliant rate that Qwest permissibly and legitimately can charge.

2. Qwest Sends Erroneous And Unreliable Service Order Completion Notices For Line Shared Loops.

At the end of the provisioning process for line shared loops, Qwest provides a Service Order Confirmation ("SOC") or completion notice, which can be received via email or accessed on a secure website via a service delivery gateway. At least presumably, the SOC tells Covad that the line shared loop order has been provisioned correctly and by the date and time contained in the SOC. Thus, Covad, like other CLECs, rely upon the SOC to begin billing and providing customer care to their customers (as well as triggering the billing date for Qwest to Covad). In short, the SOC tells Covad that the customer is its own. Since Covad provides DSL on a wholesale basis to unaffiliated ISPs, the SOC also triggers a notice from Covad to the ISP letting them know that the loop has been delivered and is ready for the next steps in service provisioning (i.e., addition of the IP layer and shipment of the self-install kit). The ISP then passes that information to its customer(s) and commences providing service.

On a large percentage of Covad orders that receive SOCs, the cross connections necessary to provision the loop to Covad's collocated facilities are poor, problematic or non-existent. Thus, despite receiving a SOC, Covad has later found that loops are not yet provisioned. Quite obviously, this failure can cause a host of problems for Covad, since it relies upon the SOC as notice that the loop is Covad's. Just as with unreliable FOCs, which creates a whole host of problems in terms of managing customer expectations,

Covad is left in the lurch, without any information as to why service has not been provisioned.

Covad has raised this issue with Qwest. Qwest's response uncovered the real problem: Qwest is not necessarily completing loop orders before it sends the SOCs. At the CLEC Forum in Denver in May 2002, Qwest informed Covad that the SOCs for the line shared loop UNE orders are not triggered by work events (such as actual completion of a loop order). Instead, Qwest stated that the SOC is sent without regard to the work performed, and instead is triggered and automatically sent on the due date provided in the FOC. This admission, while not surprising, raises a host of operational problems for Covad.

a. Qwest's Artificial Notification Process Imposes Anti-Competitive Burdens on Covad.

First and foremost, the fake SOC that Qwest provides Covad eliminates Covad's ability to know when or if a loop has been provisioned, since the SOC is the last indicator Covad receives from Qwest closing out the order. Qwest's SOCs do not perform this critical function. This translates into a number of provisioning problems, including (a) an improper elongation of the installation interval which adds to Covad's costs and impairs our relationship with the end user customer who believes we cannot competently provision service; and (b) the imposition of additional costs and lost resources because of the administrative time and cost of opening a trouble ticket, troubleshooting, potentially rolling a truck and working with both Qwest and the customer to resolve a Qwest problem that never should have occurred.

Moreover, because Covad cannot rely upon the SOC, it has no idea if a problem on a SOC'd loop order is caused by either Qwest's failure to complete the order as of yet,

or some other problem. Covad is left to guess whether it should open a trouble ticket on that loop or wait in hopes that Qwest gets around to doing the work it should have done before providing us the SOC. It appears that for some reason Qwest is intent upon sending SOCs without having done the necessary work to assure the accuracy of these critical OSS notices.

Qwest has the duty and obligation under the Act of delivering a functioning loop to Covad. To shift the burden and expense onto CLECs to correct a Qwest problem is patently unfair, improper and grossly anti-competitive. Qwest must be required to correct its SOC process to link it to the actual completion of work. Until Qwest does that, it cannot demonstrate that it is meeting its obligations under Checklist Item 4 of the Act.

b. Qwest's Fake SOCs Artificially Improve Its Reported Performance.

The data point that Qwest appears to rely upon to determine the interval in which it delivers line shared loops is the SOC – service order confirmation – which alerts Covad that all work in the central office has been completed. However, as stated above, because the SOC is not triggered by actual work completion (i.e., the completion of all necessary cross-connects in the central office), but rather is an administrative close triggered by some non-work related event, Qwest's reported performance in delivering line shared loops bears no relation to its actual performance in delivering line shared loops. In other words, the manner in which Qwest issues SOC notices renders its reported performance in provisioning line shared loops wholly unreliable and inaccurate.

c. Qwest's Supposed Solution To The Fake SOC Problem Has Not Resolved The Problems Identified By Covad. The Commission Should Require Qwest To Provide CLECs With Non-Discriminatory Router Test Access as Part of its Provisioning Process.

Qwest indicated in its July 12, 2002 *ex parte* that it has attempted to resolve, as of July 1, 2002, both the operational and performance based issues created by the fake SOC. Unfortunately, the data does not bear out Qwest's claim. As Covad's own data shows,[28] 60% of the trouble tickets it opened with Qwest from April 1, 2002 to date are due to missing or incomplete cross-connects in the central office. Stated as a straight percentage, in the month of April, Covad had to open trouble tickets on 9.2% of its Washington line shared loops delivered due to missing or incomplete cross-connects in the central office. In May, Covad had to open TTs on 11.1% of the line shared loops delivered due to missing or incomplete cross-connects. In June, the percentage again was 15.5%, and in July (month to date) it remained an abysmal 5.6%.[29]

It is clear that the new Qwest process, while potentially resolving some of the issues due to transmission of a fake SOC, has not resolved all of the problems created when Qwest sends a SOC to Covad on a line shared loop without ensuring that the work was properly done. Under Qwest's new job aid, the CO technician is supposed to place the order in jeopardy status if a problem is found on the line. Presumably, the jeopardy process would prevent the fake SOC from being issued, until and unless the line could be provisioned. What Qwest fails to explain is why a jeopardy would ever be issued where the CO technician performs a poor loop installation, resulting in a missing or bad cross-connection. In fact, in such a scenario, a jeopardy notice would never be placed on the

[28] All percentages provided are Washington specific.

[29] An argument advanced by Qwest in which it relies upon OP-5 to show that the quality of its provisioning performance is adequate should be disregarded. Qwest has freely admitted that it cannot produce the data underlying OP-5. If Qwest cannot even produce the data building blocks that permit it to report on OP-5, then it has failed to meet its evidentiary burden of showing that its performance data is accurate and reliable. In light of that failure of burden of proof, any Qwest argument grounded in OP-5 must be rejected as without foundation or basis.

order (assuming, naturally, that the CO technician is not knowingly providing a poor cross-connection). Instead, the CLEC (and the CLEC's customer) would be left to discover that the line simply did not work, in spite of the issuance of a SOC, when turning up the end user's service.

Qwest's new job aid suffers from other specific defects. First of all, Qwest has not explained what steps it has taken to make sure that its central office technicians will make complete use of its job aids. Making the job aid merely available to its technicians is insufficient. Qwest must make sure that its loop provisioning process entails the use of its job aid, and that technicians thoroughly follow through on each step. Second, Qwest's job aid suffers from the additional defect that, when problems are discovered in the line being provisioned, the central office technician is directed merely to jumper around the splitter and place the order in jeopardy status. The job aid contains no instructions directing the technician to engage in any sort of troubleshooting on the high-frequency portion of the line, unlike the voice portion.[30]

Importantly, Qwest requires the use of different and more complex processes for the installation of CLEC line shared loops than it does for itself. Covad has repeatedly requested that Qwest provide a router test for end-to-end data continuity as part of its provisioning process for line shared loops, yet Qwest has refused. Now, Qwest has decided that it will use a router test for the loops in its own retail line shared service, using the same type of router and CPE equipment that Covad uses, but continues to

[30] *See* Qwest July 12 ex parte at 4 ("Step 5"). The job aid does direct the CO technician to troubleshoot failures in the voice portion of the circuit. Qwest does not explain why it fails to provide similar direction for the high-frequency portion of the loop being provisioned to CLECs.

refuse providing Covad with such a test, even in face of poor performance on line shared loops.

This is not a new issue to Qwest. In approximately late 1999, in connection with the Minnesota line sharing trial, Covad requested that Qwest provide router testing on CLEC line shared loops. Qwest refused, citing the fact that it utilized different DSLAM and CPE equipment and that such compatibility requirements, as well as cost constraints, necessitated refusal of the Covad request.

As line shared loop volumes grew and the magnitude of the provisioning problems became evident, in third and fourth quarter of 2000 Covad requested again that Qwest provide the router test. Qwest refused. During the Line Sharing Summit with the FCC in January 2001, Covad again requested access to the router test. Verizon and SBC claimed that the routers belonged to their data affiliates and thus no access was required. Covad offered to provide the necessary routers to all ILECs, including Qwest. Qwest again refused.

Following the Line Sharing Summit, in the second quarter of 2001, Qwest stated that it would provide a line sharing verification test ("LSVT") to test data continuity on line shared loops, commencing in the third quarter of 2001. However, Qwest refused to trial the LSVT product with Covad in order to permit both parties to evaluate its effectiveness.

Contemporaneous with the deployment of the LSVT in the third quarter of 2001, Qwest upgraded to a DMT DSLAM technology. As a result of this upgrade, Covad and Qwest used, as they now use, the same DSLAM technology. As a consequence, there no longer are any issues as to router equipment compatibility, which had been Qwest's

primary objection in late 2000. Despite use of the same equipment that Covad offered in early 2001, Qwest continues to refuse to provide access to the router test or even to upgrade its MLT equipment as Verizon has done. As set forth more fully above, even after having had almost a year's experience with the LSVT, Qwest continues to be unable to correctly and completely provision Covad's line shared loops.

At the end of the day, the problems Qwest has created for itself on both the provisioning and repair of line shared loops can be resolved through use of a router test. By requiring Qwest to provide router test capabilities to CLECs, the Commission ensures that the provisioning process and associated testing undertaken to ensure that a good line shared loop is delivered (that is, a loop with circuit continuity) is at parity between Qwest and CLECs. Simply put, use of the same router test that Qwest utilizes for its own line shared loops will ensure that the Qwest technician will undertake the same testing and provisioning steps for CLEC line shared loops, which should facilitate a significant improvement in Qwest's provisioning performance. Second, use of the router test will resolve the operational issues created by Qwest through poor provisioning performance. That is, the router test will detect and permit the correction of poor or missing cross-connects prior to line shared loop delivery by Qwest, rather than at some point after loop delivery and the end user customer has formed a poor impression of Covad. Third, the router test will ensure that the SOC sent by Qwest to CLECs is reliable. In other words, if the SOC is triggered by the running of the router test (which is an automatic step on the provisioning side for retail line shared loops), then a CLEC can rest assured that all work has been completed and completed properly since the SOC is triggered by actual work completion rather than the arrival of a due date. Finally, by resolving on the provisioning

side any problems associated with a particular loop, far fewer trouble tickets will be opened by CLECs which will improve Qwest's currently poor and out of parity M&R performance for line shared loops, and will decrease the costs incurred on the M&R side to correct provisioning problems.

3. There Is No Evidence That Qwest Provides CLECs With All Loop Makeup Information at the Pre-Ordering Stage.

Historically, "because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to 'pre-qualify' a loop by accessing basic loop make-up information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service." [31] Recognizing the critical role that "pre-qualification" plays in facilitating CLEC entry into an incumbent's local markets, the FCC requires BOCs to show as part of their *prima facie* case for Section 271 authority that they meet the ILEC obligation to provide CLECs with nondiscriminatory access to meaningful loop makeup information:

> Whether a prospective customer can be provided a particular advanced service often depends upon the carrier having access to detailed information about available loops, including the actual loop length and the presence of bridged taps, load coils, and digital loop carrier equipment. As the Commission previously has explained, a BOC's duty to provide nondiscriminatory access to OSS extends beyond the interface components to encompass all of the processes and databases used by the BOC in providing services to itself and its customers ... If new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services.[32]

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[31] *See BANY 271 Order*, ¶ 140.

[32] BANY 271 Order, ¶ 141.

With Test 12.7, KPMG affirmed merely that nine tasks associated with loop makeup information were the same for wholesale and retail customers:

- The same end user information is required in order to submit wholesale and retail queries;
- The process for submitting a loop qual query is consistent for and actually used by wholesale and retail customers;
- Processes for addressing questionable loop makeup information are defined;
- The internal process flow for loop qual queries is consistent for wholesale and retail;
- Contact information for questions regarding loop qual information is readily available for wholesale and retail customers;
- Wholesale and retail customers receive completion notices and can access status of query via the interface submitted;
- Systems and processes are in place to allow both wholesale and retail to query using the customer address;
- Loop qual response types are consistent between wholesale and retail; and
- Escalation process is consistent for wholesale and retail.

The limited scope of KPMG's inquiry does nothing to ensure that Covad is able to access all loop information that it needs in order to market services. By its very terms, Test 12.7 indicates that at no point did KPMG look at whether CLECs have access to all loop qualification information resident anywhere in Qwest's loop qual or back office databases, or other records (such as engineering records). In other words, KPMG's testing fails to show that Qwest makes available to CLECs all loop qual information that it is legally obligated to provide.

a. Covad Should Have the Right to Audit Qwest's Loop Qual Information To Ensure Parity Of Access And Information.

The FCC stated several years ago in the *UNE Remand Order* that ILECs must "provide competitors with access to all of the same detailed information about the loop available to [itself], and in the same time frame as any of [Qwest's] personnel could obtain it, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install." Further clarifying that obligation in its *Verizon Massachusetts 271 Order*, the FCC stated that the relevant inquiry under the *UNE Remand Order* is not whether an ILEC's "retail arm or advanced services affiliate has access to such underlying information but whether such information exists anywhere in [the ILEC's] back office and can be accessed by any of [the ILEC's] personnel."[33] In that order, the Commission also reaffirmed its long-standing precedent that "The BOC at all times bears the burden of proof of compliance with section 271."[34] It was precisely because Verizon could not meet its burden of proof of showing non-discriminatory access to loop makeup information that Verizon withdrew its first Massachusetts 271 application, and subsequently refiled after creating a pre-order process for access to its LFACS database.[35] Verizon's first, failed attempt at 271 entry in Massachusetts ran afoul of the same requirement that KPMG's testing ignores and that Qwest's application seeks to sidestep here: that the BOC prove it provides competitors

[33] *In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Mem. Op. and Order, CC Docket No. 01-8, FCC 01-130, 41454 & 58 (Apr. 16, 2001) ("*Verizon Massachusetts Order*"). ¶ 430.

[34] *See id.* at para. 11.

[35] *See id.* at para. 57.

access to loop makeup information under the standard established by the *UNE Remand Order*, namely in the same time and manner it is available to any of its own personnel.

The importance of this obligation cannot be overemphasized. If the Commission were to permit Qwest to simply provide Covad and other competing carriers only such loop information as Qwest needed for its own retail service offerings, the Commission would be endorsing Qwest's efforts to stifle innovative broadband offerings. Qwest has both the ability and the incentive to ensure that competing carriers are unable to offer consumers any broadband products that are more innovative than Qwest's own retail products. The easiest way to accomplish that goal is to deny such competitors any access to the loop makeup information they need to determine customer eligibility for such services. If such loop makeup information is unavailable, competing carriers will be able only to determine whether the customer could purchase service that matches the parameters of Qwest's own retail offerings. Such limits on competition are contrary to the goals of the Act.

Qwest's *ex parte* submission in the ROC I applications attempts to get around this fundamental defect in Qwest's 271 showing by providing information about purported improvements in its pre-qualification tools and the underlying loop qualification database.[36] The Commission must not allow these submissions to divert its attention from the fundamental defects in Qwest's showing they fail to address.

Qwest has put forth simply no evidence to demonstrate that competitors receive access to all of the loop makeup information available to Qwest's personnel in the same time and manner. In fact, what CLECs know is that Qwest conducted bulk MLT tests

[36] *See* Qwest July 10, 2002 ex parte at 24-27.

pre-order to populate loop length information in its RLDT loop qual information database.[37] What CLECs know is that the MLT test captures over one hundred data points,[38] while Qwest's database purports to provide only MLT loop lengths.[39] What CLECs also know is that Qwest runs the MLT every month, but updates only the MLT distance rather than updating all loop makeup information.[40] In fact, as Qwest stated in its *ex parte*,

> When the Loop Qualification database was initially loaded with loop information from LFACS, some of the loops *did not contain loop length*, showing missing segments. As a result, Qwest (then US WEST) performed some MLT tests to *extract MLT distance data*, and together with other distance database record information, obtained the estimated loop length for the missing segments and algorithmically *populated the appropriate data for those segments distances* for which it applied in the loop Qualification database.[41]

Qwest does not dispute that it ran the MLT and that it only populated the RLDT with loop length distance and not all the other data produced by the MLT tests.[42] CLECs also know that Qwest then hoarded the remaining information generated by the MLT tests, by referring it only to a "dedicated engineering team for manual handling" rather than using the information generated to correct any inaccuracies or update the information contained in the RLDT.[43] Ultimately, what CLECs do not know, and what

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[37] WA 271 Trans., 7/11/02 (Liston), p. 434.

[38] The entire listing of data points captured by an MLT can be found at http://www.qwest.com/wholesale/downloads/2002/020617/AppE_0617.doc

[39] WA 271 Trans., 7/11/02 (Liston), pp. 4337-38.

[40] CO Trans., 4/18/01 (Liston), pp. 249-252. This issue was not the subject of testimony in Washington.

[41] Qwest July 10, 2002 ex parte, p. 26; *see also* WA 271 Workshop 4 Exhibit 885-T (Liston Direct), pp. 40-41; Exh. 896; WA 271 Workshop 4 Trans., 7/11/01, p. 4337-38.

[42] *Id.*

[43] July 10, 2002 ex parte, p. 26.

Qwest has refused to disclose, is what this "dedicated team" did with the remaining in excess of one hundred data points that presumably are updated on a monthly basis. It strains credulity that Qwest would simply discard the information that would permit it to solicit every end user now qualified for xDSL service. Rather, the only reasonable conclusion to reach is that Qwest took that information and used it to aggressively solicit potential DSL customers. Of course, while Qwest is capitalizing on real time, reliable loop qual information, Covad is deprived of that information to its competitive disadvantage.

The appropriate response to these defects in Qwest's evidentiary showing is an immediate, comprehensive audit of Qwest's OSS systems, databases and processes that relate to *all* loop makeup information. Qwest's past behavior alone, namely permitting outside plant personnel to "update" loop makeup information through sales referrals directly to Qwest's retail DSL division, demonstrates the need for such an audit.[44] Auditing Qwest's OSS is the only manner in which to ensure that Qwest meets its obligations to provide competitors with non-discriminatory access to the loop makeup information available to any of its personnel in both its retail and back office systems.

An upfront audit requirement makes eminent good sense. The FCC has always emphasized that CLECs should obtain loop information in the same time and manner as the BOC's retail operations. The only way to ensure that the RLDT contains the same information available to Qwest's retail operations or to any Qwest personnel is to require an immediate audit of Qwest's loop information OSS systems. This audit should not be

[44] *See* WA 271 Workshop 4 Exh. 899 (JML-15 to Direct Testimony of Jean Liston) (last page shows "option" of providing a sales referral or a database update). In Arizona Colorado, Qwest introduced, but later withdrew, a days' earlier version of the LFACS update. *See* CO 271 Workshop Exh. 5 Qwest 61 (last page shows method to update LFACS is to call MegaBit retail personnel)

limited just to the information available to Qwest retail ordering personnel. In the *SBC Kansas/Oklahoma 271 Order*, the FCC stated:

> In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, SWBT must provide carriers with the same underlying information that it has in any of its own databases or internal records. **We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying information but whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel**.[45]

The FCC even went so far as to state:

> **To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information**.[46]

Therefore, the scope of the audit ordered by the Commission should be broad enough to permit CLECs to (1) ascertain what loop information is accessible to any Qwest employee, not just what is available to Qwest's retail representatives, and (2) go beyond the information in the tools and the databases that feed those tools and to include an audit

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[45] In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, *Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶ 121 (released. January 22, 2001) ("*SBC Kansas/Oklahoma 271 Order*")(Citations omitted);* See also, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order, CC Docket No. 96-98, FCC 99-238, ¶¶ 427-31 (released November 5, 1999) ("*UNE Remand Order*"),* In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, *Memorandum Opinion and Order, CC Docket No. 01-8, FCC 01-130, ¶ 54 (released April 16, 2001) ("*Verizon Massachusetts 271 Order*").*

of Qwest's paper records, including engineering records, back office systems and databases. Under the FCC's parity standard, CLECs are entitled to have access to any loop information that is accessible by any Qwest employee, whether they access it or not, and not just the information that Qwest has selected and placed in its loop qualification tools. Absent audit access to all loop qual information, CLECs would have no way of ascertaining the completeness of Qwest's loop qualification tools. In other words, there would be no way to assess whether Qwest is providing parity access to loop information as mandated by the FCC. Given the FCC's historical concerns and requirements for the provision of loop qual information, Qwest should be required to include an audit right in the SGAT.

b. Qwest Should Be Required To Provide Pre-Order Mechanized Loop Testing.

Covad's very serious concerns about being limited to the RLDT database are not mere hypothesis or speculation. During the course of the Colorado FOC trial[47] – which involved only stand-alone SDSL loops (which Qwest never utilizes to provision xDSL service), Covad undertook a contemporaneous analysis of the accuracy of the RLDT. The FOC trial, which was designed primarily to determine whether Qwest could provide a reliable FOC (which it can't given that Qwest has provided statistically discriminatory service to Covad in the provision of multiple FOCs per order[48]), also included an analysis by Qwest and Covad of the information returned by the RLDT to Covad.[49] During the

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[46] UNE Remand Order, ¶ *151*.

[47] The information from the FOC trial was imported by Qwest to all other Section 271 proceedings, including Washington.

[48] *See infra*.

[49] Because of the way the trial progressed, there was no on-the-record discussion of the RLDT during the Colorado workshops on loops. Rather, on the record discussion was limited to whether Qwest could

course of the two month trial (March-April 2002), Covad submitted for inclusion in the trial just under 1,000 orders. Of those orders, Covad provided over 150 examples of orders (discussed more fully below) in which the RLDT returned inaccurate and unreliable data. Qwest questioned whether the information was actually unreliable on only 18 of the over 150 order examples provided by Covad. Qwest never even questioned the fact that the other 100+ orders did reflect inaccurate RLDT information. There is no dispute that the RLDT returns inaccurate and unreliable information.

As mentioned above, review of just some of the orders submitted by Covad during the course of the FOC trial[50] demonstrates that Qwest's RLDT suffers from numerous and severe deficiencies:

> (1) Covad was unable to pre-qualify 70 orders because the RLDT either did not recognize or contain information for the end user's telephone number, or the RLDT did not recognize a direct match even after that address had been validated against Qwest's address validation data base;
>
> (2) no distance was available for 14 orders;
>
> (3) no MLT distance was provided on 27 orders;
>
> (4) for 19 line shared orders, placed on Qwest's "jeopardy list" on May 7 and May 14, 2001, the RLDT indicated no bridge tap or load coil was present when, in fact, bridged tap and load coils were on the line[51]; and
>
> (5) 35% of the orders submitted resulted "in a no working telephone number response" that materially impeded Covad's ability to use the RLDT.

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provide a meaningful FOC. However, the parties did brief the issue of the accuracy of the RLDT, and those briefs were filed by Qwest and Covad with the WUTC on September 7, 2001.

[50] This document was provided by Covad to Qwest via email on June 7, 2001.

[51] This itemization was provided by Covad to Qwest via facsimile on June 12, 2001.

This itemization, standing alone, demonstrates that Qwest's RLDT fails to provide CLECs with meaningful loop makeup information. Yet, it does not even begin to address the "false positive" scenario in which the information provided by the RLDT shows that an order can be successfully placed and closed, and yet it cannot. In this regard, Covad provided Qwest seventeen examples in which the RLDT indicated a non-loaded loop of 12,000 feet or less and, yet, the order was cancelled. Nor does this itemization include the problem of "false negatives", or the situation, of which Covad provided Qwest several examples, where a CLEC can successfully close an order even though the RLDT indicates otherwise (*e.g.*, ADSL orders closed where pair gain purportedly on the line). Finally, this itemization does not include those situations in which Covad cannot pre-qualify at all a new Qwest voice customer who seeks data service from Covad until up to thirty days after that customer has begun receiving voice service from Qwest.

Even as Qwest attempted to "nit pick" Covad's findings, challenging only eighteen examples provided, Covad continued to unearth additional problems with the RLDT. More specifically, Covad determined that, depending on the validation method used (*i.e.*, telephone number versus address), more or less information is provided. For example, on one particular order, the RLDT provided loop makeup information when the telephone number was used, but provided no information when the validated address was used. On another order, the validated telephone number pulled up the wrong address, while the validated address indicated that there was no working telephone number on the premises. Equally problematic are orders in which one address pulls up two telephone lines with the identical telephone number—an obvious impossibility—but with *different* loop makeup information.

Moreover, there is no consistency within Qwest's RLDT. Where pair gain is on the line for one PON, no MLT distance and no segment loop length are provided. Yet, on another PON, even though pair gain is on the loop, the segment loop length is included. Similarly, in one screen shot for one particular loop segment, Qwest's RLDT suggests that the loop is non-loaded (as designated by the "nl" indicator in the make up description) even though load coils also are apparently present on the loop.

Notably, Qwest itself has recognized that the RLDT is unreliable. At the commencement of the FOC trial, Qwest made clear that CLECs were required to use the RLDT prior to placing an order. As the trial progressed, Covad noted that Ms. Liston no longer included in her description of the FOC trial the requirement that CLECs utilize the RLDT. The explanation for Ms. Liston's curious silence became evident when she was compelled to describe, for example, orders in which Qwest was able to provision ADSL orders where pair gain was on the line.

It is painfully evident that Qwest's RLDT drastically impairs Covad's ability to compete. Coupled with the fact that Qwest refuses to ensure that the line shared loop UNE will meet any particular technical specifications (such as no foreign voltage, opens, grounding, maximum db loss, etc.), Covad is placed at a distinct competitive disadvantage vis-à-vis Qwest.

There is a simple remedy to Qwest's inability or refusal to provide accurate and reliable loop qualification information or to provide CLECs with real time loop makeup information – an MLT test. The MLT test, which is a simple, straightforward test that can be remotely triggered and utilizes testing equipment already attached to the Qwest switches, will provide real-time loop makeup information – which Qwest conveniently

has already provided to itself and apparently updates monthly. Rather than some static, outdated and potentially inaccurate loop makeup information, the MLT allows the CLEC to see what the actual makeup of the loop is, which will actually allow it to determine whether an order should be placed.

The gravamen of Covad's request that Qwest perform a pre-order mechanized loop test ("MLT") is simple: Covad seeks a test that will provide some assurance that the loop delivered by Qwest to Covad does, in fact, have data continuity and is capable of supporting xDSL services. In a nutshell, the MLT is a method by which a CLEC can remotely test the customer's loop by using the same switch-based test capability used by Qwest. An MLT provides reliable and, more importantly, real time information regarding the *current* makeup of the loop, including almost one hundred data points, such as electrical impedance, shorts, grounds, foreign voltage, etc.[52]

Needless to say, this information will help Covad determine whether the loop is capable of supporting xDSL service prior to order placement. MLT is a simple test, utilized regularly by both Qwest and CLECs in the repair context, which requires only about 20 seconds to perform. It is simple, easy, cost-efficient, and provides some assurance that loop makeup information is reliable. Thus, a pre-order MLT will greatly enhance the probability of successful order placement and the delivery of good loops. From a straightforward technical perspective, if Qwest were to allow Covad to perform pre-order MLT testing, delivery of bad or incorrectly provisioned loops would be greatly minimized.

[52] The entire listing of data points captured by an MLT can be found at http://www.qwest.com/wholesale/downloads/2002/020617/AppE_0617.doc

The technical assumptions regarding the advantages of an MLT are born out in fact. Covad conducted a pre-order MLT trial with Verizon. Generally speaking, the impetus of the trial was the fact that Covad experienced numerous wiring and installation problems in central offices – just as it experiences today wiring and installation problems in Qwest central offices. Covad also was experiencing loop conditions that were not indicated in the loop qualification data (just as we experience today with Qwest) and also some loops that were marginally acceptable for voice service, but with electrical faults that would not allow data services.[53] The pre-test MLT, which was performed by Verizon, enabled Verizon to identify and correct problems prior to loop delivery, rather than after order closure by the ILEC, which cut down on the time and money both parties incurred to remedy provisioning problems. As a result of that trial, Covad experienced a dramatic increase in the number of orders it was able to successfully close, due to the improved reliability of the loop makeup information, as well as a significant increase in the delivery of "good" line shared loops delivered by Verizon, with a consequent, significant decrease in the interval for delivery.

The advantages that the pre-order MLT provides are not just one-way. Rather, Qwest also will benefit, in a very real manner, from pre-order CLEC access to MLT. Through a pre-order MLT, a CLEC will know most of the attributes of the loop. If the information shows the loop cannot support xDSL service, then the CLEC will not submit

[53] Because Verizon uses an upgraded version of the MLT and Qwest does not, there are significant differences in the capabilities of the test. With the Verizon MLT, pre-order and order use of the MLT allows the generation of accurate loop makeup information as well as a determination that the line shared loop has been provisioned properly within the central office. The Qwest MLT, by contrast, is an older version with more limited capabilities. That is, the Qwest MLT can generate significant information regarding the makeup of the loop, but cannot determine whether the loop has been properly provisioned within the central office. Thus, Covad's request for pre-order MLT is designed and limited to addressing deficiencies and inaccuracies in loop makeup information, whereas the request for access to the Qwest router is designed to ensure that the loop has been properly provisioned and is a good loop upon delivery.

that order. This will save Qwest money because it will not incur any administrative costs in creating a service order and flowing it through its system. Qwest will save additional money because it will not actually undertake any work, such as a truck roll or the dispatch of a CO technician to provision a loop because the order will not be placed. The mutual benefit that flows to both the ILEC and CLEC as a result of the MLT has been recognized by Verizon. Verizon provides access to MLT during the provisioning process and includes the results of the MLT when it sends the service order completion notice to the CLEC. Further, Verizon takes the results of the MLT and feeds that it into its "LiveWire" database so that the loop qual information will be as up to date and accurate as possible.

It is important to note at this point that, of all the loop types offered by Qwest to CLECs, only line shared loops do not come with any kind of guarantee as to the technical specifications. For example, according to Qwest (as well as its on-line product catalog or "PCAT"), 2 wire non-loaded and ISDN loops are guaranteed to meet specified technical parameters at the time of delivery. Similarly, per the PCAT, both distribution subloops and line shared distribution subloops are guaranteed to meet specified technical parameters at the time delivery. It is only line shared loops that Qwest refuses to provide any kind of technical guarantee, and instead will only affirm that line shared loops have a limited amount of bridged tap and load coil. This is particularly troubling since Qwest primarily provides a line shared DSL product and Covad, generally speaking, is Qwest's only significant competitor in the line shared DSL space in the Qwest region.

There is no technical impediment to running a pre-order MLT. As Qwest itself admitted, when Qwest did its bulk loop prequalification, it used an MLT to populate the

RLDT. Qwest's decision to perform the test, retain the results for itself, but populate only some of the information in the RLDT dispels any objection to performing such a test. Moreover, the value of the information that the MLT provides to CLECs has been borne out by Verizon's implementation of access to MLT information. Consequently, as the FCC observed in the *Verizon Massachusetts Order*, Verizon "has begun implementing access to manual loop qualification [including the MLT] as a pre-order function . . . with complete implementation expected in October 2001."

The only apparent objection Qwest lodges against a pre-order MLT is that it is "invasive" – that is, an MLT run while the customer is on the telephone might disrupt that call. That concern is immaterial and is no impediment to a pre-order MLT.[54] First, the MLT takes only 10-20 seconds, so the chance of disruption is nominal. Second, the MLT has the capability of determining whether the line is being used at the time of testing and thus testing can be scheduled around times of use.[55] Third, in order to alleviate whatever potential for disruption there actually might be, Covad represented during Workshop 4 that it will only run a pre-order MLT on customers who have sought service from Covad; and will only run a pre-order MLT after hours in order to ensure there is no service disruption.[56] Qwest rejected that offer and never indicated how it avoided any invasiveness when it ran its own MLT, which procedure Covad would adhere to as well.[57]

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[54] WA 271 Workshop 4 Trans., 7/11/02 (Liston), p. 4335.

[55] WA 271 Workshop 4 Trans. (Zulevic), p. 4338-39.

[56] WA 271 Trans. Workshop 4 (Doberneck), p. 4345.

[57] WA 271 Trans. Workshop 4 (Liston), p. 4348.

As discussed at length above, Qwest has failed to demonstrate that it currently provides competitors with non-discriminatory access to loop makeup information. Furthermore, as discussed above, Covad has significant reason to believe that Qwest has not made available to competitors all of the loop makeup information available to its personnel. In light of Qwest's failure to meet its evidentiary burden, and its likely failure in fact to meet its ILEC obligations to provide nondiscriminatory access to loop makeup information, Qwest should be required to provide pre-order MLT before its application for Section 271 relief is granted.

4. Qwest Sends Erroneous And Unreliable Firm Order Confirmations For Covad Loops.

a. Fake FOCs Impose Anti-Competitive Operational Burdens On Covad.

PO-15 measures the number of *Qwest-caused* due date changes per order submitted by a CLEC. According to Qwest's own PID reports for Covad, in every single one of the past twelve months, Qwest's performance has been drastically and statistically significantly discriminatory with respect to Covad, with Qwest making far more due date changes per Covad order than for its own orders. In fact, in June, 8% of Covad's orders received multiple Qwest-caused due date changes, which equated to three times the number of due date changes for Qwest retail order. In May, 30% of Covad's orders received multiple Qwest-caused due date changes, which equated to almost ten times the number of due date changes for Qwest retail orders. In April, 28% of Covad's orders received multiple Qwest-caused due date changes, which equated to almost ten times the number of due date changes for Qwest retail orders. In March, 20% of Covad's orders received multiple Qwest-caused due date changes, which equated to almost seven times

the number of due date changes for Qwest retail orders. There is no doubt as to the consistency and magnitude of Qwest's discriminatory conduct.

The negative ramifications of Qwest's "fake FOC" problem are innumerable. After Covad places its order with Qwest, Qwest responds first with an acknowledgment that it received the order – the LSRC. After receipt of the LSRC, Qwest returns a Firm Order Commitment ("FOC") to Covad. A FOC serves two main purposes. First, it tells Covad that Qwest has accepted the order and that the order was properly filled out in form and content. Second, the FOC tells the CLEC that its order can be provisioned (e.g., facilities are available) and the FOC gives the CLEC a date by which the ILEC commits to fulfill the order. Thus, Covad, like other CLECs, uses the FOC to manage its own workforce to prepare for fulfillment of an order. We also use the FOC to manage customer expectations of when an order will be fulfilled. It is therefore essential that the FOC is accurate and timely.

As the Covad-specific PID Reports show, on numerous orders, after receiving an initial FOC with a committed due date, Qwest then sends Covad a second FOC with a new committed due date. Qwest should not be sending multiple FOCs. What these problems should tell the Commission is that Qwest is not doing the work necessary before it sends a FOC. When the ILEC sends a FOC it should have already determined that (1) the order was properly filled out by the CLEC, and (2) that the order can be fulfilled by the ILEC on a date specified on the FOC. The receipt of multiple FOCs, demonstrates that Qwest is not doing the preliminary work necessary before it sends the FOC to the CLEC.

Because of Qwest's failure to do the necessary work prior to issuing a FOC, Covad is compelled to expend scarce resources to determine the actual delivery date and to mend damaged customer relationships. By way of example, following receipt of a FOC, Covad informs its partner/ISP of the FOC date which, in turn, informs the end-user (the ultimate customer) of the loop delivery date to which Qwest has "committed." When Qwest sends a subsequent FOC, or puts in jeopardy an order that was already FOC'd, Covad must then call its ISP and/or end-user customer to reschedule the provisioning date. Because the end-user must often take time off from work to provide access to the Qwest technician, Qwest's failure to meet its firm order "commitment" results in a rescheduling of the FOC and the end-user must take additional time off from work. End-user frustration and consequent damage to Covad's reputation and credibility necessarily flow from such rescheduling and repeated rescheduling.[58]

Equally significant is the negative impact on Covad's relationship with its customer when it tries to explain why the date for the delivery of its DSL loop must be rescheduled because of the receipt of multiple FOCs with revised due dates. Simply put, Covad's explanation – that Qwest misinformed Covad of the installation date or missed the installation altogether – sounds precisely like it is "passing the buck." As a consequence, Covad's credibility is undermined, thereby creating the possibility that the end-user will opt to go with another DSL provider, like Qwest.

[58] In the "ROC I" 271 proceeding, WC Docket 02-148, Qwest argues that in some cases its poor performance under the PO-15 metric reflects its (unilaterally) moving the FOC date to an earlier date, thereby providing superior service than committed to in the previous FOC. Covad submits that, even assuming arguendo that this is the case for some of Qwest's FOC changes, the customer disruption involved in moving up a FOC date for orders requiring a Qwest technician to perform work at the customer premises (e.g., standalone loops) is hardly "superior" service. In such instances, Qwest's unilateral change of the delivery date requires a corresponding change in availability for the end user as well. The frequent FOC changes reflected in Qwest's performance results thus impact Covad's reputation and customer relationships regardless of which way the changed FOC date moves.

Covad pays the price for Qwest's poor FOC and loop delivery performance in the form of strained and/or lost customer and end-user relationships. Because it appears that Qwest does not treat its own end-users in a comparably unprofessional manner, the Commission must ensure that such disparate treatment ceases immediately by demanding that the FOC date provided by Qwest include a measurable level of credibility and that Qwest meet its obligation to timely provision loops rather than make meaningless promises that it will do better.

The fact that PO-15 is labeled a "diagnostic" standard is irrelevant. As the third party vendors indicated in both the Colorado and Washington hearings on the KPMG Final Report, the fact that a measurement is diagnostic in no way precludes a finding that a failure to perform at parity disposes of the issue of whether CLECs have a meaningful opportunity to compete. To the contrary, performance under a diagnostic measure can indicate discrimination that is competitively significant and meaningful.

Qwest clearly is not fulfilling its obligations under the Act to generate FOC notices that provide competitors a "meaningful opportunity to compete."[59] In order to remedy the problems created by Qwest's poor provisioning processes, a number of steps must be taken. First, Qwest should be required to physically verify facilities before providing the FOC. Only through doing such a verification can Covad rely comfortably on the FOC provided. Second, Qwest should be required to include PO-15 in the CPAP so as to create an incentive on the part of Qwest to do the work necessary to provide a reliable FOC before it is sent to CLECs. Finally, when Qwest issues a FOC change, it should be required to credit CLECs an amount equal to the due date change charge Qwest assesses

[59] *BANY 271 Order*, ¶ 86.

CLECs when a CLEC changes a due date. Unless and until all three steps are taken, Qwest cannot be deemed to have satisfied its obligations under the Act.

5. Qwest's Line Shared Loop UNE Performance Is Unacceptably Poor.

Qwest's line sharing maintenance and repair performance casts into doubt Qwest's commitment to competition in Washington. To provide some context, it is clear that Qwest currently really only has one competitor in the DSL market in the state of Washington -- Covad. Perhaps unable to resist its monopolistic tendencies now that only one competitor is left standing, Qwest is not providing CLECs – and particularly Covad – with a meaningful opportunity to compete:

> MR-4A. Qwest failed to perform at parity in two of the four most recent months reported and the most recent month reported.
>
> MR-4C. Qwest failed to perform at parity in the two most recent months reported.
>
> MR-6A. Qwest failed to perform at parity in the three most recent months reported.
>
> MR-6C. Qwest failed to perform at parity in the two most recent months reported and four of the six most recent months reported.
>
> MR-7A. Covad's line shared loops within MSA had chronic repeat trouble rates in the four most recent months, ranging from an abysmal 27.27% of orders experiencing a repeat trouble to almost 62% of orders experiencing a repeat trouble.
>
> MR-7C. Covad's line shared loops, no dispatch, had chronic repeat trouble rates in the four most recent months, ranging from an abysmal 15.79% of orders experiencing a repeat trouble to almost 38% of orders experiencing a repeat trouble.

Qwest attempts to explain away its poor line sharing M&R results by directing the FCC's attention to the OP-5 and MRx "*" PIDs. Qwest has provided data for the "*" PIDs in an effort to improve its reported performance, particularly where that

performance hasn't met the agreed-upon performance measures. The problem, however, with the "*" PIDs is that they do not come with any indicia of reliability. Specifically, in its response to a Washington Commission Bench Request, Qwest conceded that the additional steps it takes to produce results under "*" PIDs have never been audited by any third party. A great deal of skepticism regarding the accuracy of any data produced pursuant to the "*" PIDs is, therefore, in order, particularly in light of the problems uncovered by Liberty in connection with the "scrubbing," coding and reporting of trouble tickets, as reflected in Observation 1028.

In light of Qwest's poor and unduly discriminatory performance in the one area where it provides a DSL service, Qwest cannot be deemed to have complied with its obligations under the Act. As set forth more fully above, Covad believes that a router test will greatly facilitate an improvement in Qwest's M&R performance of line shared loops. However, unless Qwest is required to provide CLECs with access to its router test, or unless and until Qwest can demonstrate that it accords parity treatment to Covad in the maintenance and repair of its line shared loops, Qwest's application for Section 271 relief must be denied. At a minimum, therefore, Qwest must be required to (1) provide access to the router test to CLECs; (2) retrain its technicians in the maintenance and repair of line shared loops; (3) commit to dispatching technicians trained in the repair of line shared loops (and not POTS lines) upon the opening of a trouble ticket by a DLEC; (4) commit to the posting of documentation in the COs to facilitate the correct maintenance and repair of line shared loops; and (5) commit to receiving authorization from Covad before closing out any trouble tickets.

6. Qwest New Build and Held Order Policy

a. Qwest's Held Order Policy Skews Its Performance Reporting.

The WUTC has required Qwest, consistent with federal law, to construct facilities for CLECs under the same terms and conditions as it would build for itself. Further, the WUTC also properly required Qwest to report on the number of orders going into held status.

While, theoretically, these WUTC-ordered requirements alleviate Covad's concern regarding Qwest's new build and held order policy, a critical concern that remains un-addressed is the impact of Qwest's "held order" policy on its reported performance. Put simply, because Qwest continues to reject orders for which facilities are not available, it materially, but artificially, improves its reported performance.

For the key ordering and provisioning ("OP") measurements, including OP-3 (installation commitments met), and OP-4 (installation interval), and OP-6B ("measures the average number of business days that service is delayed beyond the original due date provided to the customer for *facility reasons attributed to Qwest"*) the process is as follows. A CLEC submits an LSR to Qwest. Upon receipt, Qwest assigns the appropriate facility, if available, and issues a FOC to Covad which contains the date on which the loop will be delivered. If no facility is available to fill a loop order, then Qwest (under its supposed, but in Washington undocumented) policy holds the order for thirty business days.

Importantly, under the Qwest held order policy, no due date is ever communicated to the CLEC when an order goes into held status. Indeed, no due date – or FOC – is ever provided to the CLEC unless and until Qwest is confident it can and will fill the order. Because no FOC (with the due date) is ever provided unless and until the order can be

filled, Qwest automatically positions itself to always meet the due date, thereby always meeting its OP-3 and OP-4 targets, and automatically caps the number of delay days on any given order, which is measured by OP-6. In so doing, Qwest circumvents its wholesale service performance obligations under the QPAP and, more specifically, PID measures OP-3, OP-4, and OP-6B. In order to remedy this problem, Qwest must be required to report its performance on orders that are held but later filled, measuring that interval from the time the order is first submitted by the CLEC until the order is filled by Qwest.

b. Qwest Is Not Complying With the Reporting Requirements Imposed by the WUTC.

As set forth above, the WUTC ordered Qwest to report, on a monthly basis, the number of orders going into held status due to a lack of facilities. As a theoretical matter, the requirement imposed by the WUTC that Qwest report on the number of orders going into held status should resolve one of Covad's concerns regarding Qwest's incentives to invest in its network. Specifically, PIDs OP-6 and OP-15 are designed to measure delay days due to a lack of facilities. Underlying the parties' agreement on the definition and implementation of these measures was to monitor whether Qwest is capable of and does fill CLEC orders or whether competition is being stymied because Qwest unreasonably refused to invest appropriately in its network. Thus, the rationale underlying the development of these PID measures is neither immaterial nor competitively insignificant; these PIDs are designed to determine whether, consistent with its obligations under federal law, Qwest is actually filling loop orders consistent with CLEC demand.

The parties' understanding with respect to OP-6 and OP-15 is consistent with federal law. Qwest must provide to CLECs, including Covad, "[l]ocal loop transmission

from the central office to the customer's premises, unbundled from local switching or other services."[60] Subsumed within the definition of a "loop" are "two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals."[61] To satisfy its obligation under § 271, therefore, Qwest must prove not only that it has a concrete and specific legal obligation to furnish x-DSL capable loops, but also that it is *providing these loops to competitors consistent with their demand and at an acceptable level of quality*.[62]

While Qwest's supposed monthly reports should provide evidence as to whether it is fulfilling its legal obligations to provision reasonable order demands by CLECs at an acceptable level of quality, the fact of the matter is that Qwest is not doing this reporting. For example, in June (the most recent month available for the Covad-specific PID reports), Qwest reported no unbundled loop orders (as opposed to line shared loops) being held due to a lack of facilities. Yet, in the weekly listing of orders going into held status that Qwest's Held Order Group provides to Covad, Qwest reported that six orders were in held status the week of June 3, 2002; six orders were in held status the week of June 10; three orders were in held status the week of June 17, and another order was in held status for the week ending June 24. Thus, it is clear that Qwest is not reporting all orders that go into held status.

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[60] 47 U.S.C. ¶ 271(c)(2)(B)(iv).

[61] *Local Competition Order*, ¶ 380; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Mem. Op. And Order, CC Docket No. 96-98, FCC 99-238 (Rel. Nov. 5, 1999) ("*UNE Remand Order")*, ¶ 166-167.

[62] *BANY 271 Order*, ¶ 269; *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region InterLATA Services in Louisiana*, Mem. Op. And Order, CC Docket No. 98-121, FCC 98-271, (Oct. 13, 1998), ¶ 54 ("*BellSouth Second Louisiana Order*").

Qwest must be required to report on the number of orders held due to a lack of facilities and the duration of the hold (OP-15), and delays due to lack of facilities (OP-6), regardless of whether those orders are ever completed (i.e., measure all orders that go held due to a lack of facilities, regardless of whether the orders are completed, cancelled or rejected).

7. Qwest's Processes Are Replete With Human Error.

KPMG found that there are excessive amounts of human errors being made by Qwest personnel as they process CLEC orders. These human errors directly impact Qwest's reported commercial performance since some of the errors result in longer than standard due dates being assigned, as well as the improper inclusion or exclusion of orders from the performance results.

The "human error" problem was detected a number of times during the OSS tests. Initially, the problem was identified in O3086 (Observation 3086) after KPMG noted that a number of problems encountered by KPMG and HP were attributed by Qwest to human error and that additional training would remedy the problem. After seeing 75 Qwest responses that attributed the problem to human error and prescribed additional training as the remedy, KPMG stated that it had "identified a pattern in Qwest's Observation and Exception responses that refer to the need for additional training and/or training enhancements."

KPMG observed the problem of excessive human error as a direct result of transaction testing and calls to Qwest's help desk. When Qwest personnel were manually handling pseudo-CLEC orders and responding to pseudo-CLEC calls to Qwest's help desk they found that Qwest personnel were making far too many mistakes. Rather than

testing to ensure training was effective, KPMG simply interviewed Qwest employees and reviewed documentation – neither of which can determine whether training was effective.

The folly of KPMG's approach to resolution of the human error issue was illustrated by O3110, which was opened after O3086 was closed, and in connection with E3120 (Exception 3120). E3120 related to orders that fell out even though they should have flowed through the Qwest systems. When reviewing the orders that should not have fallen out, there were nine LSRs for UNE-P and resale services that were manually processed by Qwest personnel. Out of those nine LSRs, Qwest personnel made human errors on two of them (22.2%). There were also eighteen line shared loop UNE orders that were manually handled by Qwest personnel. Out of those eighteen orders there were at least three errors made on the orders (16.67%).

Rather than do a retest, which should have been done in light of the "military style test" philosophy of this OSS test, KPMG reviewed historical results for orders that Qwest manually handled since the introduction of all the training and other improvements that supposedly should have resolved the human error problem. Of the forty-nine orders manually processed by Qwest, KPMG found Qwest had made human errors on seven of them (14.3%). In total, KPMG examined seventy-six pseudo-CLEC orders that were manually handled by Qwest personnel as part of E3120 and found twelve instances of human error (15.8%). KPMG's determination that 15.8% of the manually handled pseudo-CLEC orders had human errors is ample and sufficient evidence to show that Qwest had, in fact, not remedied the excessive rate of human errors that was the subject of O3086.

The impact of human error is particularly acute for Covad. Even though it clearly is following the correct process in submitting orders that are flow-through eligible, 76% of Covad's GUI order and 38% of its EDI orders for June 2002[63] nonetheless are manually handled by Qwest. During the time period reviewed by Liberty in connection with the data reconciliation, 100% of Covad's line shared loop UNE orders were manually handled by Qwest. Assuming a somewhat constant rate of human error, a significant percentage of Covad orders will be manually mishandled by Qwest.

Covad's concern regarding mishandling of its orders is founded in fact. During the Liberty data reconciliation, Liberty uncovered a number of errors in Qwest's performance reporting that was the direct result of human error (the other source of error were software coding problems). The errors committed by Qwest resulted in the improper inclusion and exclusion of certain orders, which had an overall affect of incorrectly reporting performance for Covad as well as the aggregate.

Qwest undoubtedly will argue that it has corrected the problem (which Covad disputes and discusses more fully below in the section regarding the Liberty data reconciliation) and that any ongoing concerns will be addressed by the development of PO-20. However, PO-20 does not address all of the issues identified by KPMG in its PID adequacy study, nor does it even begin to address the problem of human intervention and error for many of the products ordered by Covad. More importantly, Qwest thus far

[63] In the past four months, no less than 36% of Covad's EDI orders and 59% of its GUI orders are manually handled by Qwest.

has refused to meaningfully commit to including PO-20 into the CPAP, thus rendering PO-20 a paper tiger.[64]

Qwest urges the Commission to ignore KPMG's finding of approximately a 15% rate of human error in Qwest's OSS systems and processes, directing the Commission's attention to Liberty's aggregate results finding a 6% rate of human error in UNE loop orders.[65] As an initial matter, the Commission should recognize that neither of these two numbers, 6% vs. 15%, is an acceptable rate of human error in Qwest's OSS systems and processes for CLECs. That aside, the Commission should reject Qwest's characterization of Liberty's data reconciliation as a more reliable indicator of the rate of human error than KPMG's findings.

KPMG's opinions and findings should be given greater weight for a number of reasons. KPMG was fully familiar with the data maintained and produced by both the P-CLEC and Qwest. Liberty, while familiar with the Qwest documentation, did not have any understanding of CLEC data or even of Covad's business prior to the reconciliation. For instance, Covad's primary contact at Liberty did not understand what line sharing is or what Covad ordered when it ordered a line shared loop. Furthermore, Liberty ignored many significant issues raised by Covad during the data reconciliation. For instance, Covad raised the issue of whether Qwest was correctly reporting PO-5, measuring FOC intervals. Disconnect orders are supposed to receive FOCs in 24 hours, yet the SIG and

[64] Although Qwest recently proposed a pathway to inclusion of PO-20 in the CPAP, Qwest's proposal is wholly inadequate. Qwest has agreed in principle only to include PO-20 as a diagnostic measure in the CPAP, meaning Qwest would suffer no liability for failure to comply with the measure. Moreover, Qwest's current proposal would not, in any event, result in inclusion of PO-20 as an full measure for at least a year.

[65] *See* Qwest July 10 ex parte at 14-22.

the Qwest "InfoBuddy" stated the interval for disconnects was three days. With respect to the PO-5 measure, Liberty also discounted Covad's calculation of the PO-5 interval where there was no LSRC from Qwest supporting Covad's calculation. The problem with Liberty's approach is that, for orders placed via the GUI as opposed to via EDI, an LSRC is never returned. Covad also raised the issue that LSRs were being rejected improperly, not because they were inaccurate or incomplete, but because there was a pending order to add a voice service. Covad indicated to Liberty that this was not an acceptable basis for LSR rejection under the PIDs, yet Liberty never responded to Covad's objection. Liberty, while using the SOC to measure loop delivery, never uncovered the fact that the SOC was being triggered by the FOC date and not by any work events. Finally, Liberty failed to confirm the efficacy of Qwest's proposed corrections to human error issues raised by Liberty's reconciliation effort. Because of the manifold deficiencies in the Liberty data reconciliation, the Commission should grant greater weight to KPMG's findings on human error issues than the Liberty data reconciliation.

The FCC has stated that, "the reliability of reported data is critical, and that properly validated metrics must be meaningful, accurate, and reproducible."[66] The FCC has also stated, "the credibility of the performance data should be above suspicion."[67] Here, neither of those criteria can be deemed to have been satisfied here. Qwest must be required to prove, through third party verified transaction testing, that it has corrected the

[66] Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. CC 00-65, Memorandum Opinion and Order, FCC 00-238, released June 30, 2000 ("Texas Order"), ¶ 428 (note omitted).
[67] *Id,* ¶ 429.

human error problem. Qwest also should be required to implement immediately all of the proposals made by KPMG in the PID adequacy study and to expand PO-20 to include all of those proposals. Further, Qwest should be required to include all product categories into PO-20. Finally, Qwest should be required to include PO-20 upon it finalization into the QPAP and to apply penalties retroactively to compensate CLECs for Qwest errors.

8. Qwest's OP-5 Reporting Calls Into Question The Reliability Of Its Reported Performance For That PID.

Qwest's OP-5 performance reporting cannot be deemed accurate and reliable. In short, Qwest cannot produce the underlying data for OP-5 and therefore that metric can never be reconciled. What this means is that Qwest can report any kind of new service installation quality that it wants without any opportunity for investigation and reconciliation by a CLEC that believes its commercial experience with new service installation quality is different than what Qwest is reporting. At a minimum, Qwest must be required to revamp its data collection, manipulation and reporting mechanisms for OP-5 so that the data underlying this critical metric can be made available to regulators and competitors during any audits undertaken under the CPAP or otherwise.

9. The Liberty Reports Do Not Substantiate Qwest's Claim That Its Performance Data Is Accurate And Reliable.

From the outset of the OSS checklist item workshops, CLECs complained that Qwest's actual commercial performance was far from optimal. Where data has been provided or testimony given regarding Qwest's actual commercial performance, a significant issue of dispute between Qwest, on the one hand, and CLECs, on the other, was whose data reflected more accurately the CLECs' commercial experience. In order to resolve those types of issues and to minimize the burden placed on state commissions

with responsibility for discerning whether Qwest's actual commercial performance complies with its obligations under Section 271, the Regional Oversight Committee authorized the retention of Liberty Consulting Group to undertake a data reconciliation of Qwest and CLEC data for any PID, any sub-measure, any state and any time period. Covad was one of three CLEC participants in the data reconciliation.

Liberty concluded that Qwest's performance data is not materially inaccurate. This is simply not correct. Liberty's Data Reconciliation Report for Washington first pointed out in the section relating to the Covad data reconciliation that there are "several problems" with Qwest's data reporting processes, including:

> (1) improperly including its own retail voice orders with Covad's wholesale line shared loop orders;
>
> (2) improperly double-counting some of Covad's 2-wire non-loaded loop orders in consecutive months (again inflating performance results);
>
> (3) improperly excluding line shared orders Covad included in the denominator when calculating the OP-4 results because of faults in the Qwest data environment; and
>
> (4) improperly excluding line shared and non-loaded loop orders that Covad included in the denominator when calculating PO-5 because of faults in the Qwest data environment.

Because of their numerosity and impact, Liberty concluded that these errors "significantly affected" Qwest's reported data performance results.

It is impossible for Liberty to conclude that Qwest's performance data is accurate and reliable when looking at the specific results for the Qwest-Covad data reconciliation for Washington. Specifically, Qwest was able to affirmatively prove that its treatment of Covad's non-loaded loops for purposes of OP-4 reporting was correct in only 92% of the orders sampled. Further, Qwest's performance reporting was affirmatively incorrect on 4% of the orders.

The problems in Qwest's reported performance only increases when turning to OP-4 for line shared loops. Qwest was able to affirmatively prove that its treatment of Covad's line shared loops for purposes of OP-4 reporting was correct in only 77% of the orders sampled. Further, Qwest's performance reporting was incorrect on 23% of the orders.

Qwest's reported performance data continues to deteriorate when looking at the PO-5 results. Qwest was able to affirmatively prove that its treatment of Covad's orders for purposes of PO-5 reporting was correct in only 72% of the orders sampled. Further, Qwest's performance reporting was incorrect on 28% of the orders.

Qwest claims that the problems uncovered by Liberty were corrected. However, there is no evidence whatsoever that that actually occurred. Liberty, through Mr. Stright, conceded in the Washington workshops on performance data that good auditing practice is not to rely on simple assertion, but to actually investigate whether a fix is in place. However, Liberty did not comply with this self-described "good auditing practice." Specifically, as Liberty made clear, it closed Observations 1026, 1027, 1029 and 1030 without ever reviewing Qwest's proposed code fixes or OSS updates against actual commercial data. As Liberty admitted in a response to a Records Requisition issued in the Washington 271 proceeding, it had not tested the code fixes against any commercial data generated after the individual code fixes were implemented. What this means is that Liberty never took the time to confirm whether the code fix would actually do what Qwest opined it would do or that such code changes would not impact other elements or components of Qwest's performance reporting data. Thus, there is nothing any party, let

alone the FCC, can look at to confirm that Qwest implemented the changes and that they were efficacious.

Liberty's reliance on a code review and "rerun" data is also problematic because (1) Liberty did not uncover the data problems identified in the reconciliation Observations and Exceptions in its initial "code audit" of the PIDs; and (2) Liberty was fully aware of the fact that code changes can and have impacted the accuracy of other areas of Qwest's reported performance data – as Mr. Stright testified in Washington. Liberty was also aware that it was entirely possible that the code changes implemented by Qwest as a result of errors uncovered by Liberty during the reconciliation could have unintended consequences that create other errors in Qwest's reported performance.

Liberty's decision to close other Observations and Exceptions opened during the data reconciliation on the basis of additional training provided by Qwest is equally problematic. Like KPMG, Liberty never confirmed whether that training took place or if it was efficacious, but relied only on interviews and review of training materials.

For all of these reasons, Qwest cannot be deemed to have demonstrated, as it is required to do, that its reported performance data is accurate and reliable.

Conclusion

For the reasons stated herein, the Commission should reject the applications of Qwest for authority to provide in-region, interLATA services in Montana, Utah, Washington and Wyoming.

Respectfully submitted,

/s/ Praveen Goyal

Megan Doberneck
Senior Counsel

Jason Oxman
Assistant General Counsel

Praveen Goyal
Senior Counsel for Government
and Regulatory Affairs

Covad Communications Company
600 14th Street, N.W.
Washington, D.C. 20005
202-220-0400 (voice)
202-220-0401 (fax)

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